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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,507	10/23/2001	Marlin Stephen Heilman	001086	3933

23464 7590 12/17/2003

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EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3732

6

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/047,507

Applicant(s)

HEILMAN ET AL. *JK*

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Applicants' election of the invention of claims 1-38 in response to the Restriction Requirement made in the Office Action dated September 17, 2003 is noted. Accordingly, this Office Action addresses pending claims 1-38.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference elements mentioned in the description: "246". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 14 and 15 are objected to because of the following informalities. Claim 15 refers to "said blood pump" but a blood pump has not been positively recited in Claim 14. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 6, 8, 9, 10, 13-16, 18, 19, 21-23, 25, 27-30 and 33-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherman et al. (US 5,891,159).

Sherman et al. disclose an apparatus for attaching a conduit to a vessel including an enclosure 12 with a port 76 for evacuating air therefrom, a tool 116 with a holding member 117, a conduit 14 and attachment members or tissue bays 22 (Figures 12, 16A and 16B, col. 1, lines 13-19, col. 8, lines 25-31 and lines 54-66 and col. 17, lines 21-65).

The method steps of claims 16, 18, 19, 21-23, 36 and 37 are inherently performed during normal use of the Sherman et al. enclosure for attaching a conduit to a vessel.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 13-15, 16-30, 32 and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al. in view of in view of Leahy et al. (US 5,813,409).

Sherman et al. disclose a conduit 12 attachable to a wall of a vessel 60 and a tool 105 having a holding member 115 insertable through conduit 12.

Sherman et al. do not disclose an evacuated enclosure or an enclosure filled with fluid.

Leahy et al. teach a flexible fluid-tight envelope filled with insufflation fluid with an access port to provide a sterile environment for insertion of surgical instrumentation (Figure 5, col. 1, lines 10-14 and col. 5, lines 41-58).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided an envelope around conduit 12 of Sherman et al. to provide a sterile aseptic environment while performing surgery, as taught by Leahy et al.

Regarding claims 2 and 7, it is the Examiner's position that evacuating the chamber of air is equivalent to filling the chamber with insufflation fluid such as saline for an aseptic environment.

In view of the above discussion, the method steps of claims 16-24 and 36-38 are performed during normal use of apparatus of the combination of Sherman et al. and Leahy et al. for attaching a conduit to a vessel.

Claims 11, 12, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al. in view of of Leahy et al., further in view of Mollenauer et al. (US 6,077,277).

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Sherman et al. do not disclose a tool member with a rotatable barrel member having a cutting blade surrounding a central rod member.

Mollenauer et al. teach a tool member having a rotatable outer tube or barrel member having a cutting blade 46 wherein the central rod can be manipulated to hold material and the outer tube can be rotated to cut material (Fig. 8, col. 1, lines 55-67 and col. 5, lines 5-49).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the tool of Sherman et al. with the tool of Mollenauer et al. for simultaneous grasping and cutting of tissue.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicants' attention is specifically directed to the following patent.

US 2,835,253 (Borgeson): Figure 2 and col. 3, lines 51-70.

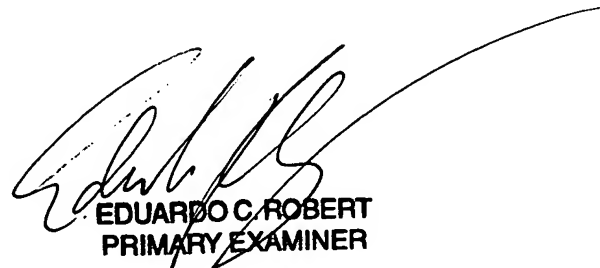
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

AR *Anuradha Ramana*

December 14, 2003


EDUARDO C. ROBERT
PRIMARY EXAMINER